

1 MAUREEN E. McCLAIN (State Bar No. 062050)

Email: mcclain@kmm.com

2 ALEX HERNAEZ (State Bar No. 201441)

Email: hernaez@kmm.com

3 MATTHEW P. VANDALL (State Bar No. 196962)

Email: vandall@kmm.com

4 KAUFF McCLAIN & McGUIRE LLP

One Post Street, Suite 2600

5 San Francisco, California 94104

Telephone: (415) 421-3111

6 Facsimile: (415) 421-0938

7 Attorneys for Defendants

ALTA BATES SUMMIT MEDICAL CENTER,

8 RUSSELL D. STANTEN, M.D., LEIGH I.G.

IVERSON, M.D., STEVEN A. STANTEN, M.D., and

9 WILLIAM M. ISENBERG, M.D., Ph.D.

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12  
13 COYNESS L. ENNIX, JR., M.D., as an  
14 individual and in his representative capacity  
under Business & Professions Code Section  
17200 et seq.,

15 Plaintiff,

16 v.

17 RUSSELL D. STANTEN, M.D., LEIGH I.G.  
18 IVERSON, M.D., STEVEN A. STANTEN,  
M.D., WILLIAM M. ISENBERG, M.D.,  
19 Ph.D., ALTA BATES SUMMIT MEDICAL  
CENTER and does 1 through 100,

20 Defendants.  
21

CASE NO. C 07-2486 WHA

**DECLARATION OF MAUREEN E.  
McCLAIN IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION TO ALTER  
BRIEFING AND HEARING  
DATES**

DEPT: Courtroom 9, 19th Floor

JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007

TRIAL DATE: No date set.

1 I, Maureen E. McClain, do hereby declare:

2 1. I am a partner in the law firm of Kauff, McClain & McGuire, attorneys  
3 for Defendants in this action. I submit this declaration in order to describe the expedition  
4 with which Defendants have pursued presenting their Special Motion to Strike to the  
5 Court for decision. I have personal knowledge of the facts here set forth.

6 2. Plaintiff filed his complaint in state court on April 3, 2007.  
7 Defendants were served with process on or about April 5, 2007. Defendant Alta Bates  
8 Summit Medical Center served a notice of deposition upon Plaintiff on April 12, 2007.

9 3. On April 20, 2007, I spoke by telephone with Scott Emblidge,  
10 Plaintiff's counsel. During our discussion, which centered upon Defendants' request to  
11 take Plaintiff's deposition before filing a responsive pleading, I conveyed to Mr. Emblidge  
12 that we intended to file a motion addressing the constitutionally-protected nature of peer  
13 review. Mr. Emblidge responded by indicating an understanding of the type of motion  
14 Defendants would be filing. Thus, Plaintiff's counsel has had notice since April 20, 2007  
15 of Defendants' intent to file the motion that was filed on May 30, 2007.

16 4. Plaintiff re-filed the same lawsuit in federal court on May 9, 2007.  
17 On May 10, 2007, Plaintiff dismissed his state court action.

18 5. Since the date of the filing of the federal court case, Defendants  
19 have taken steps to expedite hearing of their Special Motion to Strike because of their  
20 contention, expressed more fully in the motion, that this lawsuit is an impermissible  
21 interference with the important public function of medical staff peer review. Such steps  
22 include:

23 (A) Defendants appeared in the federal court action, without the  
24 necessity of re-service of the complaint, on May 22, 2007;

25 (B) Defendants filed a Confidentiality Stipulation and [Proposed]  
26 Protective Order, to facilitate the filing of motions predicated upon confidential peer  
27 review activity, on May 23, 2007. (The Court approved such Stipulated Protective Order,  
28 subject to stated conditions, on May 29, 2007.);

1 (C) Defendants filed their Special Motion to Strike, together with  
2 their Motion to Dismiss on May 30, 2007, within the 60 day period from service of the  
3 State Court action set forth in California Code of Civil Procedure Section 425.16 (f) for  
4 the filing of a motion under such section; and

5 (D) Defendants noticed their motions for the first available  
6 hearing date in order to comply, insofar as possible given the federal court's  
7 requirements for noticing motions, with the requirement of CCP Section 425.16 (f) that  
8 any Special Motion to Strike be heard "not more than 30 days after service of the motion  
9 unless the docket conditions of the court require a later hearing."

10 6. As I have explained in my various communications with Mr.  
11 Emblidge concerning the issue of the hearing dates for the motions, while I wish to  
12 extend professional courtesies to opposing counsel whenever possible, CCP Section  
13 425.16, both in express language and in statutory purpose, demands expedition.  
14 Defendants are concerned both with meeting the statutory requirements of CCP Section  
15 425.16 and also with availing themselves of the protections afforded by the statute,  
16 including an early hearing on the Special Motion to Strike.

17 I declare under penalty of perjury pursuant to the laws of the State of  
18 California that the foregoing is true and correct.

19 Executed this 6th day of June, 2007, at San Francisco, California.

20  
21 /S/  
22 MAUREEN E. McCLAIN  
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